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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,889	11/18/2003	Hirotsugu Fukumori	71210	7992
23872	7590	03/23/2005	EXAMINER	
MCGLEW & TUTTLE, PC 1 SCARBOROUGH STATION PLAZA SCARBOROUGH, NY 10510-0827			SANDY, ROBERT JOHN	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/716,889

Applicant(s)

FUKUMORI ET AL.

Examiner

Robert J. Sandy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.  
4a) Of the above claim(s) 6-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Office action is responsive to the reply filed on 24 December 2004.

#### ***Election/Restrictions***

Newly submitted claims 6-18 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: New claims 6-18 are directed to a species of the invention requiring the distinct features of a first side base tape including at least three films laminated together, and a second side base tape including at least three films laminated together. These features were not originally presented in the original claims. Originally presented claims 1-5 (claims 4 and 5 were canceled in applicant's amendment filed 24 December 2004) were directed to a patently distinct disclosed invention corresponding to the zipper tape described as "Example 6" on pages bridging pages 25 and 26, and shown in Figures 12-14. Example 6 has been described as a zipper tape commensurate in scope with the original claims wherein the zipper tape includes a male strip and a female strip separately, and letters, marks, colors or the like are printed or provided on the material of one of the base tape and or one of the zipper tape. However, the original written description does not describe the Example 6 zipper tape as having the new feature of a first and second side base tapes each having at least three films laminated together. Therefore, new claims 6-18 are directed to a patentably distinct species of the claimed invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 6-18 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### *Specification*

The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to teach how to make and/or use the invention, i.e., failing to provide an enabling disclosure

The following is a quotation of 37 CFR 1.71(a)-(c):

- (a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.
- (b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.
- (c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

The specification is objected to under 37 CFR 1.71 because it fails to provide an enabling disclosure teaching how to make the claimed invention, as to the following: the specification fails to provide an enabling disclosure teaching how to the process of providing “letters, marks, colors” are “printed or provided *in* the material of one of the base tape and or one of the zipper tape”, as recited on page 24, lines 10 and 11. Without an enabling description explaining how the process of printing or providing letters, marks, or colors *in* the material of a base tape or a zipper tape, one of ordinary skill in the art would not know how to make the claimed invention.

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***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 1, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2 and 3, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauman et al. (U. S. Patent No. 6,562,165) in view of Hustad (U. S. Patent No. 5,103,979). Bauman et al. ('165) discloses a zipper tape (21) for a bag produced by forming a base tape (41, 48, 51) and a mating section (comprising a male strip (30) and a female strip (20) separately by extrusion molding (i.e., "extrusion", see col. 7, lines 28-35) and then thermally fusing and bonding (see description of pertaining to the melted flange portions 24, 34; melted binder layer 28a, 28b; see description in col. 9, line 49 through col. 10, line 23) the mating

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section to the base tape, except for wherein letters, marks, colors are printed on the material of the base tape.

Hustad ('979) shows an analogous bag having printed indicia (see Figs. 2-10) of letters, marks, or colors (see Figs. 2-10, and col. 5, lines 2-6, "Additional coloration, for example only at the message peel area, could be added to panels colored in this manner") on the base tape (panel 22). Hustad ('979) further discloses (concerning claims 2 and 3) a specific color (i.e., a "whiten" color; col. 4, line 52), and wherein different colors are used for the base tape connected to the male strip and the female strip on the base tape. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided letters, marks, or colors on the base tape, as taught by Hustad, since Hustad ('979) states, at least in col. 2, lines 65-68, "to directly inform the consumer or prospective purchaser that the peel seal has been opened".

#### *Response to Arguments*

In view of applicant's amendment to replace the originally filed abstract, the replacement abstract has been approved for entry, and the objection to the abstract indicated in the prior Office action has been withdrawn.

In view of applicant's replacement the drawing sheets, which have been approved for entry. Therefore, the drawing objection indicated in the prior Office action has been withdrawn.

In view of applicant's amendment to claim 1 by having "print on the material", the rejection under 35 U.S.C. § 112, first paragraph, to the claims indicated in the prior Office action, has been withdrawn.

Applicant's argument(s) regarding that Kettner et al. (U.S. Patent No. 5,252,281) either alone or in combination with Bauman et al. (U.S. Patent No. 6,562,165) fail to teach or suggest the provision of a base tape with a printed surface, is/are moot in view of the new ground(s) of rejection.

Applicant's argument(s) regarding that Gailble et al. (U.S. Patent No. 5,397,182) fails to suggest the provision of a base tape element which is provided in combination with a male or female section and wherein this base tape section has a printed layer of visible letters, marks or one or more colors, is not found persuasive. Gailble et al. ('128) explicitly states "at least one of the grasping areas or flanges being formed with a roughened surface to define a write-on surface

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enabling the consumer to label or identify the container contents"; col. 2, lines 46-49, and "to receiving ballpoint pen ink " in col. 2, line 63. Here, the "grasping areas or flanges" are representative of base tapes. Furthermore, the provision upon which applicant relies are not recited in the rejected claims (i.e., previously rejected claims 1-5). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

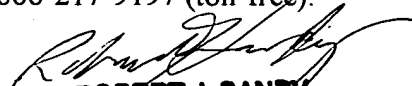
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Sandy whose telephone number is 703-305-7413. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

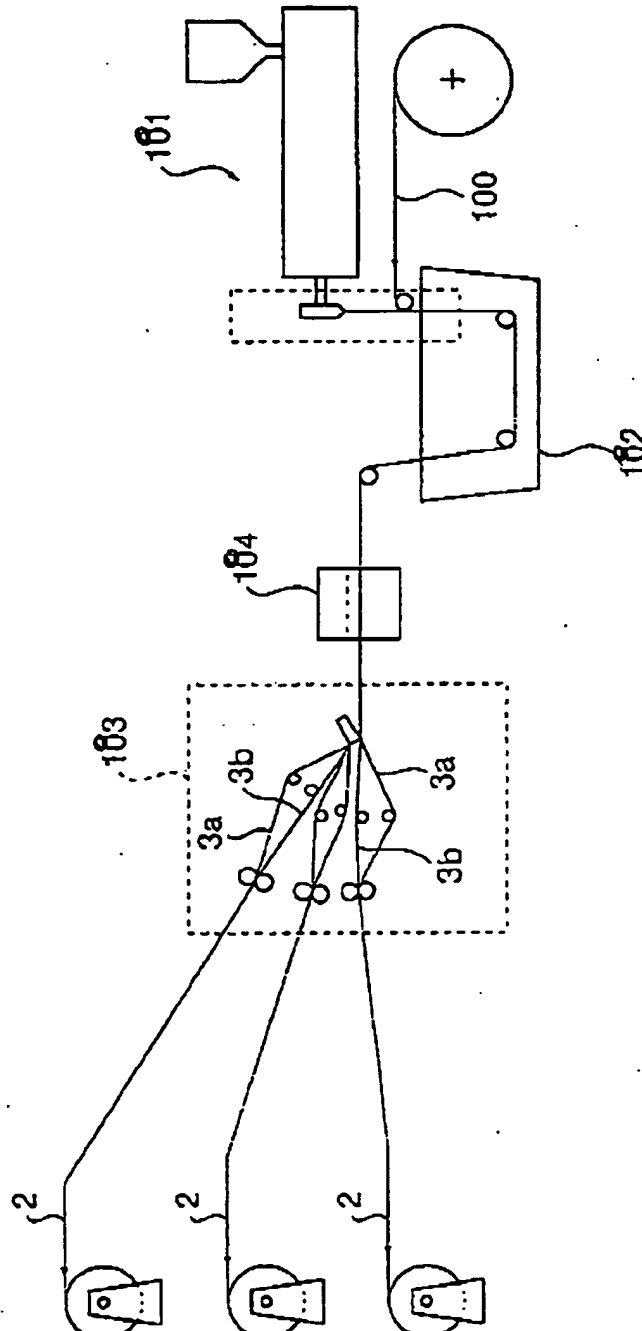
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**ROBERT J. SANDY**  
**PRIMARY EXAMINER**

REPLACEMENT SHEET

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FIG. 6

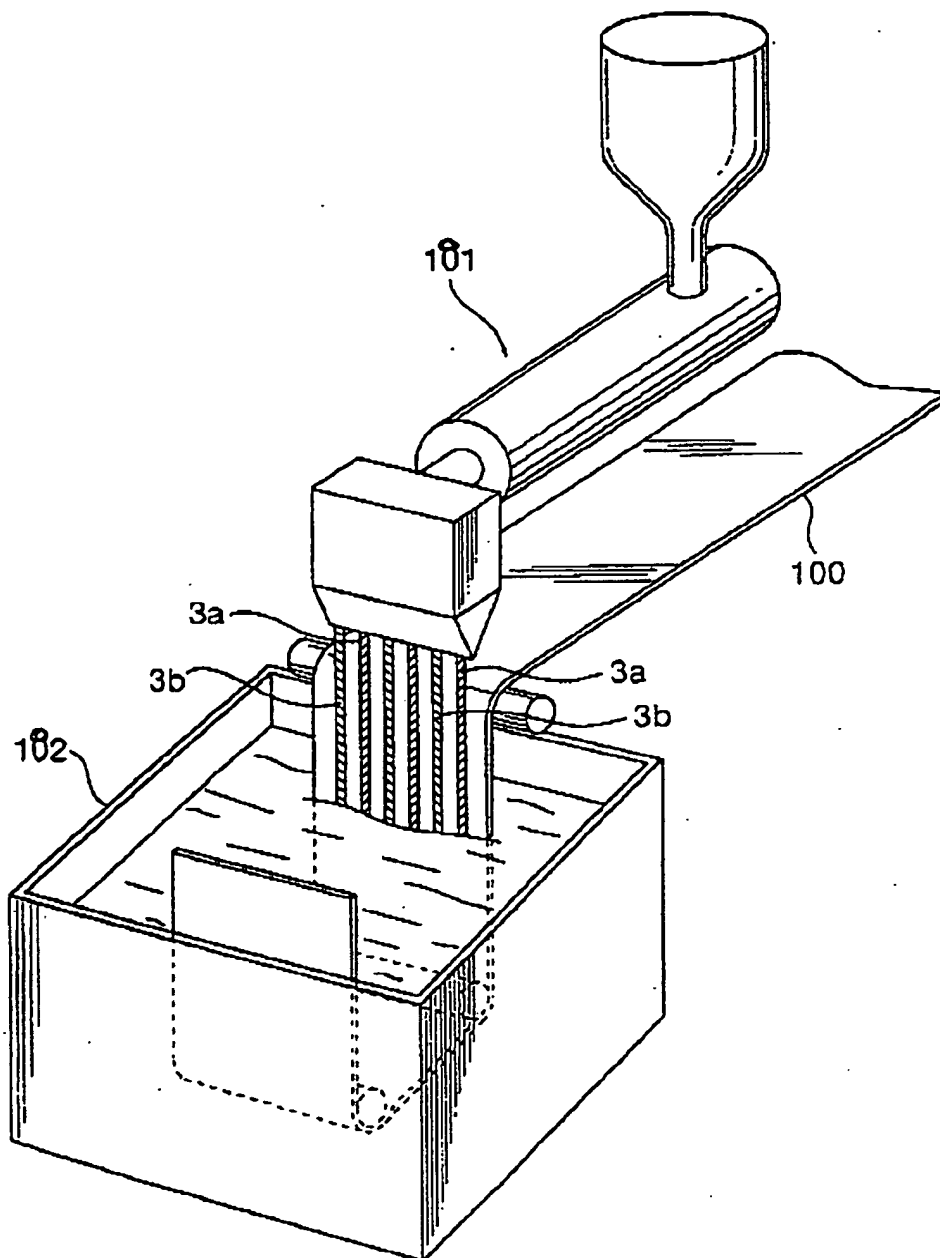




REPLACEMENT SHEET

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FIG. 7



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FIG. 8

